



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

SEP 28 2004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Allan F. Bedwell
Deputy Secretary for Regulatory Programs
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Re: Enforcement Discretion Concerning Diesel Fuel in Florida through
October 5, 2004

Dear Mr. Bedwell:

The purpose of this letter is to confirm the extension of the enforcement discretion concerning motor vehicle diesel fuel in Florida that was transmitted to you by electronic mail on September 25, 2004.

As you know, due to the hurricanes that have struck Florida this year there has been a shortage of undyed, low sulfur motor vehicle diesel fuel in Florida. Because of this shortage, on September 2, 2004, the United States Environmental Protection Agency (EPA) exercised enforcement discretion to allow temporary use of motor vehicle diesel fuel having a visible evidence of red dye and a sulfur content exceeding 500 parts per million (ppm) until midnight, September 7, 2004, throughout the State of Florida. This enforcement discretion was extended until midnight, September 24, 2004.

On September 24, 2004, due to the approach of Hurricane Jeanne, the Florida Department of Environmental Protection requested that EPA extended the diesel fuel enforcement discretion through September 28th, but only for certain counties in Southern Florida served by Port Everglades. This limited extension was granted by my letter of September 24, 2004. However, on September 25th you requested that the diesel fuel enforcement discretion be expanded to the entire State of Florida through October 5, 2004. On September 25, 2004, my approval of this request was transmitted to you by electronic mail.

Because of the current and expected shortage of motor vehicle diesel fuel meeting the 500 ppm sulfur standard in the affected Florida counties, EPA will exercise its enforcement discretion to temporarily allow regulated parties to supply motor vehicle diesel fuel having a sulfur content greater than 500 ppm with visible evidence of red dye within the entire State of Florida. This exercise of enforcement discretion begins, retroactively, at midnight on September 24, 2004, and

will continue until midnight on Tuesday, October 5, 2004. However, retail outlets or wholesale purchaser-consumers that receive motor vehicle diesel fuel having a sulfur content greater than 500 ppm with visible evidence of red dye under the terms of this discretion may continue selling or dispensing this fuel after October 5, 2004, until their supplies are depleted.

To the extent practicable, regulated parties must take all reasonable steps to provide compliant diesel fuel for use within the affected Florida counties. Thus, regulated parties must use compliant fuel that is available before using any non-compliant fuel, and regulated parties who transport fuel into the State of Florida must take reasonable steps to transport enough compliant fuel to meet expected demand.

If a regulated party elects to supply motor vehicle diesel fuel having a sulfur content greater than 500 ppm in Florida to retail outlets or wholesale facilities under this letter, the party must submit a written report to EPA no later than November 15, 2004, which indicates the total volume of motor vehicle diesel fuel supplied to these retailers and wholesale facilities pursuant to this waiver, on a per day basis. These reports must be sent to the following address:

Adam Kushner, Acting Director
Air Enforcement Division
Mail Code 2242A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

If you have questions, please call Mr. George Lawrence, Chief, Mobile Source Enforcement Branch, at (202) 564-1307.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas V. Skinner", is written over a horizontal line.

Thomas V. Skinner
Acting Assistant Administrator